

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Jonathan Houghton,

Petitioner-Appellant,

v.

Polk County Board of Review,

Respondent-Appellee.

ORDER

**Docket No. 09-77-1400
Parcel No. 312/00302-312-001**

On January 4, 2011, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Thomas Knapp of Ruhl & Ruhl Commercial Company, West Des Moines, Iowa, represented the appellant.. The Polk County Board of Review designated Assistant County Attorney Ralph Marasco, Jr., as its legal representative. Both parties relied upon the certified record and provided additional evidence in support of their positions. The Appeal Board having reviewed the entire record, heard the testimony and being fully advised, finds:

Findings of Fact

Jonathan Houghton is the owner of a commercially classified, multiple-tenant retail building located at 3171 101st Street, Urbandale, Iowa. According to the property-record card in the certified record, the improvement is a 41,037 square feet of building area, of which 34,910 square feet is finished, built in 1994. The site is 170,755 square feet.

Houghton protested to the Polk County Board of Review regarding the 2009 assessment. The January 1, 2009, total assessment of Houghton's property was \$3,022,000 allocated as follows: \$1,075,000 in land value and \$1,947,000 in improvement value. Houghton's claim was based on the grounds that the property was assessed for more than the value authorized by law under Iowa Code

section 441.37(1)(b) and that there was a downward change in the value since the last assessment under sections 441.37(1) and 441.35(3). In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment.

In his petition, Houghton sought relief to a total assessed value of \$2,500,000. The Board of Review provided partial relief and reduced the assessment to \$2,800,000, allocated as \$1,075,000 in land value and \$1,725,000 in improvement value.

In his appeal to this Board, Houghton reasserted the ground of over-assessment, but contends the correct assessed value is \$2,400,000.

Houghton provided a listing sheet of the subject property to the Board of Review, but the date of the listing was not printed or reported in the certified record.

An appraisal of the subject property was jointly commissioned by Houghton and the Polk County Board of Review. The appraisal has an effective date of January 1, 2009.

Thomas Knapp testified on behalf of Houghton. Knapp stated the appraisal was jointly retained and paid for by the parties and the appraiser was recognized as a “reputable appraiser by both.” Knapp, however, later contradicted this testimony stating that he does not believe the appraisal is an accurate reflection of value because it does not reflect an “as is” value of the subject property and the appraiser should have known and employed “board practices.” Knapp asserts the “as is” value would reflect the actual rents of the subject property compared to the market rents analyzed in the appraisal. Additionally, he asserts that it is “widely known” the assessor’s office routinely gives an adjustment if actual vacancy is higher than market vacancy rates, which he contends is the subject property’s situation. Knapp did not provide any evidence of this widely known practice.

The appraisal submitted by Houghton was completed by Russ Manternach of Commercial Appraisers of Iowa, Inc, Des Moines, Iowa. All three approaches to value (cost, income, and sales) were developed. The cost approach was given minimal consideration in the final reconciliation, while both the sales and income approaches were given consideration. The sales approach to value indicated a value of \$2,390,000 and the income approach to value indicated a value of \$2,140,000. Manternach reconciled these two approaches to a final value as of January 1, 2009, of \$2,270,000.

Knapp did not disagree with the sales considered by Manternach or the cost analysis. However, he believes that actual rents should have been considered in lieu of a reconstructed market rent analysis. He now contends the correct value of the subject property, as of January 1, 2009, is \$1,600,000. Knapp wanted both actual rent and actual vacancy to be used in valuing the subject property. Additionally, he wanted a discount for lease-up. There was no credible evidence to support \$1,600,000 as the correct and market value of the subject.

Both Houghton and the Polk County Board of Review agreed upon an appraiser they considered to be reputable and jointly retained his services. No credible testimony was presented which would indicate the appraisal should not be relied upon.

After reviewing all the evidence, we find the Manternach appraisal is the best evidence in the record. The appraisal demonstrates the subject property is assessed for more than authorized by law and its fair market value.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal

Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Houghton and the Polk County Board of Review jointly retained an appraisal of the subject property. All three approaches to value were developed in the appraisal. The appraisal reconciled a final value of \$2,170,000 as of January 1, 2009. The evidence supports the claim that the property is assessed for more than the value authorized by Iowa Code section 441.21. Therefore, we modify the January 1, 2009, assessment of the property located at 3171 101st Street, Urbandale, Iowa, as determined by Polk County Board of Review.

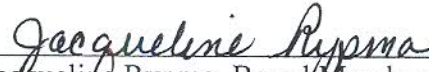
THE APPEAL BOARD ORDERS that the property located at 3171 101st Street, Urbandale, Iowa, is modified to a total value of \$2,270,000; representing \$1,075,000 in land value and \$1,195,000

to the improvements as of January 1, 2009. The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 28 day of January 2011.



Karen Oberman, Board Chair



Jacqueline Rypma, Board Member

Cc:

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AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>1-28</u> , 2011.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	